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12
13 **UNITED STATES DISTRICT COURT**
14
NORTHERN DISTRICT OF CALIFORNIA

15 In re:
16 ANTHONY SCOTT LEVANDOWSKI,
17 Reorganized Debtor.

Case Nos. 4:22-cv-02781-YGR;
4:22-cv-02783-YGR;
4:22-cv-02786-YGR; and
4:22-cv-02789-YGR
(Jointly Administered)

18 On Appeal from Bankruptcy Court
19 Case No. 3:20-bk-30242-HLB

20 The United States of America, on behalf of the
21 Internal Revenue Service, and California
22 Franchise Tax Board,

23 Appellants,

24 v.
25 Anthony Scott Levandowski,
Appellee.

**LEVANDOWSKI RESIDUAL
LIQUIDATION TRUST'S MOTION
FOR JOINDER AND SUBSTITUTION
AS PARTY UNDER FEDERAL RULES
OF CIVIL PROCEDURE 20(a)(2) AND
25(c)**

[No Hearing Requested]

1 Pursuant to Federal Rules of Civil Procedure 20(a)(2) and 25(c), the Levandowski
 2 Residual Liquidation Trust (the “Trust”) hereby moves for an order substituting and joining the
 3 Trust as Appellee, as it serves as the successor to Anthony S. Levandowski in his capacity as
 4 debtor and debtor in possession.

5 **I. FACTUAL BACKGROUND**

6 On May 2, 2022, the United States Bankruptcy Court for the Northern District of
 7 California (San Francisco Division) (the “Bankruptcy Court”) entered an order [IRS Excerpt of
 8 Record, Exhibit 20] (the “Confirmation Order”) confirming the *Debtor’s Combined Disclosure*
 9 *Statement and Chapter 11 Plan dated March 29, 2022* [IRS Excerpt of Record, Exhibit 8]
 10 (including all exhibits thereto, and as amended or modified from time to time pursuant to the
 11 terms thereof, the “Plan”)¹ in the chapter 11 case of Anthony S. Levandowski, in his capacities
 12 as both debtor and debtor in possession. The Effective Date of the Plan occurred on August 25,
 13 2022. *See Declaration of Tobias S. Keller in Support of Motion to Dismiss Appeal*, filed
 14 concurrently herewith. Among other things, the Plan provides for (i) the creation of the Trust to
 15 hold and administer certain Liquidation Trust Assets and distribute the proceeds therefrom to the
 16 Holders of certain Allowed Claims, in accordance with the terms of the Plan and the
 17 Levandowski Residual Liquidation Trust Agreement, and (ii) the termination of the debtor’s
 18 obligations as debtor in possession.

19 **II. RELIEF REQUESTED**

20 By this Motion, the Trust requests that it be joined as Appellee, as it has succeeded to the
 21 role of the debtor in possession, and that the caption be amended accordingly.

22 **III. BASIS FOR RELIEF REQUESTED**

23 Under Article XII(A) of the Plan, except for the Individual Commitment and the Debtor’s
 24 obligations under the Plan, as of the Effective Date of the Plan, the Debtor was discharged from
 25 all Claims that have been or could have been asserted as of the Effective Date pursuant to
 26 sections 108 and 727(b) of the Bankruptcy Code. IRS Excerpt of Record at 186-187. The

27 ¹ Capitalized terms used but not defined herein shall have the definitions contained in the
 28 Plan.

1 Liquidation Trust Assets, which include most assets of the Debtor's bankruptcy estate, *id.* at 157-
 2 58 (Plan Article II(A)(74)), all were transferred to the Trust on the Effective Date. *Id.* at 179
 3 (Plan Article IX(A)). *See also* Declaration of Amanda Swift in Support of Motion to Dismiss
 4 Appeal, filed concurrently herewith. For these reasons, the Trust is responsible for any tax
 5 liability that the debtor in possession would have had under the Plan were the Taxing Authorities
 6 to prevail on their Appeals. The Trust is therefore a real party in interest, having succeeded to
 7 the obligations of the debtor in possession.

8 The debtor, Anthony S. Levandowski, remains the debtor. Should the Taxing Authorities
 9 prevail on their Appeals, they have asserted that the debtor (in addition to the Trust) will have
 10 responsibility for the putative tax liabilities they have asserted. Accordingly, while the Trust
 11 seeks permission to be joined as an Appellee, as it has succeeded the debtor in possession, it does
 12 not seek to (and does not) represent the interests of the debtor in his personal capacity.

13 Federal Rule of Civil Procedure 20 provides that parties may be joined if any right to
 14 relief is asserted against them jointly, severally, or in the alternative with respect to or arising out
 15 of the same transaction, occurrence, or series of transactions or occurrences; and any question of
 16 law or fact common to all defendants will arise in the action. Fed. R. Civ. P. 20(a)(2). Federal
 17 Rule of Civil Procedure 25 provides that “[i]f an interest is transferred, the action may be
 18 continued by or against the original party unless the court, on motion, orders the transferee to be
 19 substituted in the action or joined with the original party.” Fed. R. Civ. P. 25(c). Appellees
 20 requested the Taxing Authorities’ consent for the relief requested herein. The FTB consented,
 21 but the IRS was unable to state a position in advance of Appellees’ filing deadline. For the
 22 reasons set forth above, the Trust submits that it should be joined as an Appellee.

23 **WHEREFORE**, the Trust respectfully requests entry of an order granting the relief
 24 requested herein and such other and further relief as the Court may deem just and proper.

25 Dated: October 24, 2022

**GOODWIN PROCTER LLP
 KELLER BENVENUTTI KIM LLP**

26 By: /s/ *Dara L. Silveira*
 27 Dara L. Silveira

28 *Attorneys for Appellees*